

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 25 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIGUEL IGNACIO LORENZANA-
TORRES; et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74655

Agency Nos. A070-749-555

A096-051-950

A096-051-951

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2009**

Before: LEAVY, HAWKINS and TASHIMA, Circuit Judges.

Lead petitioner Miguel Ignacio Lorenzana-Torres and his family, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. Our jurisdiction is governed by 8

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo ineffective assistance of counsel claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

We agree with the agency that Lorenzana-Torres failed to show he was prejudiced by his former counsel's performance. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (where petitioner's counsel failed to file a brief with the BIA, presumption of prejudice was rebutted because alien could not demonstrate plausible grounds for relief).

The evidence that Lorenzana-Torres presented with his motion to reopen concerned the same basic hardship grounds previously considered by the agency. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006). We lack jurisdiction to review the BIA's discretionary determination that the cumulative evidence was insufficient to establish a prima facie case of hardship for cancellation of removal. *Id.*

We lack jurisdiction to review the BIA's underlying order dismissing Lorenzana-Torres' appeal because this petition for review is not timely as to that order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.